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23 **BEFORE THE**  
24 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

25 HEARING IN THE MATTER OF  
26 CALIFORNIA DEPARTMENT OF WATER  
27 RESOURCES AND UNITED STATES  
28 BUREAU OF RECLAMATION'S  
REQUEST FOR A CHANGE IN POINT OF  
DIVERSION FOR CALIFORNIA WATER  
FIX

**LOCAL AGENCIES OF THE NORTH DELTA  
ET AL., ISLANDS, INC., AND THE SAN  
JOAQUIN COUNTY PROTESTANTS'  
RESPONSES TO:**

**(1) DWR'S OBJECTIONS TO TESTIMONY  
AND EXHIBITS SUBMITTED BY LAND, ET AL.  
(GROUP 19) AND DANIEL WILSON (GROUP  
20) AND MOTION TO STRIKE; and**

**(2) SLDMWA'S OBJECTIONS TO PART  
1B PARTIES' CASES IN CHIEF**

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1 **I. INTRODUCTION**

2 The objections raised in the Department of Water Resources' ("DWR")<sup>1</sup> and San Luis &  
3 Delta-Mendota Water Authority's ("SLDMWA") Objections to Part 1B Parties' Case in Chief  
4 ("SLDMWA Objection") to the testimony and evidence presented by Local Agencies of the  
5 North Delta, Bogle Vineyards/DWLC, Diablo Vineyards/DWLC, and Stilwater Orchards/DWLC  
6 and Islands, Inc. (collectively, "LAND et al.") are without merit. As that testimony is relevant,  
7 reliable, and plainly admissible, LAND et al. respectfully request that the SWRCB overrule  
8 DWR's and SLDMWA's objections in their entirety.

9 Water Code section 1702 requires that when a petition for change is filed, the petitioner  
10 must establish that the change will not operate to the injury of any legal user of the water  
11 involved. Consistent with that requirement, Part 1 of this hearing addresses two questions: (1)  
12 whether the proposed changes would in effect initiate a new water right, and (2) whether the  
13 proposed changes would cause injury to any municipal, industrial or agricultural uses of water,  
14 including associated legal users of water. (October 30, 2015 Notice of Hearing ("Notice"), p.  
15 11.)

16 On May 31, 2016, the Petitioners submitted testimony and exhibits in support of their  
17 case in chief for their petition to add points of diversion to their water rights. On September 2,  
18 2016, LAND et al. submitted the written testimony and exhibits of Daniel Wilson, Richard Elliot,  
19 Russell Van Loben Sels, Josef Tootle, Tom Grant, Michelle Leinfelder-Miles, Erik Ringelberg,  
20 Tom Hester, and Bradford Lange. Each of these witnesses offered written testimony regarding  
21 the injury to legal users of water in the Delta as a result of the petitioned Project. DWR and  
22 SLDMWA objected to certain portions of this testimony and the associated exhibits as  
23 improper on a variety of bases. For the reasons outlined below, the objections are without  
24 merit, and should be overruled.

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<sup>1</sup> DWR's objections were filed after the deadline set by the Hearing Officer.

1 **II. GENERAL RESPONSES**

2 **A. Background**

3 Evidence in a hearing on a petition for change is admitted in accordance with  
4 Government Code section 11513, which requires the admission of relevant evidence if “it is the  
5 sort of evidence on which responsible persons are accustomed to rely in the conduct of  
6 serious affairs, regardless of the existence of any common law or statutory rule which might  
7 make improper the admission of the evidence over objection in civil actions.” (Gov. Code, §  
8 11513, subd. (c).) The Board has recognized that this standard is generally more permissive  
9 than the one imposed in civil actions, observing that “hearing officers generally prefer to admit  
10 evidence that would be admissible under the State Water Board’s regulations, using the more  
11 liberal standards applicable to administrative proceedings.” (SWRCB Ruling on Joint  
12 Objections to Truckee-Carson Irrigation District’s Exhibits in the Truckee River Hearing (Aug.  
13 11, 2010, p. 1).) The testimony and exhibits offered by LAND et al. are both relevant and  
14 reliable, and are therefore admissible.

15 **B. The Objections to Witness References as Lacking Foundation are Baseless**

16 Each expert witness for LAND et al. compiled a list of references upon which their  
17 testimony relied, and these materials were included as exhibits to assist the parties and the  
18 hearing officers. DWR has objected to a number of these exhibits as lacking foundation and  
19 relevance. These objections are baseless on both counts. First, as reference material for  
20 testimony they are relevant to the proceedings. Second, DWR has not established how the  
21 materials lack foundation. Under the Evidence Code, the opinion testimony of an expert may  
22 be based on matter personally perceived by or known to the expert or any matter “made  
23 known” to the expert, provided such matter is “of a type that reasonably may be relied upon by  
24 an expert in forming an opinion upon the subject to which his testimony relates.” (Evid. Code,  
25 § 801, subd. (b); *People v. Bui* (2001) 86 Cal.App.4th 1187, 1196.)

26 In addition, there are a few exhibits that witnesses did not specifically cite in their  
27 testimony, but upon which they relied. LAND et al. submitted these exhibits for the benefits of  
28 the parties and Hearing Officers because they provide support to LAND et al.’s cases in chief.

1 If it is ultimately determined that the witnesses did not rely upon these exhibits in making their  
2 testimony, they will not be entered as evidence.

3 Both the cited exhibits and those that witnesses relied upon without citing are provided  
4 as supporting materials for conclusions and opinions set forth in witness testimony. DWR  
5 incongruously claims that witness testimony lacks foundation while at the same time objecting  
6 to the documents on which the testimony is based. DWR has failed to make a showing that  
7 the reference materials should not be admitted.

8 **C. Objections to Figures and Mapping are Baseless**

9 DWR has objected to a number of LAND et al. maps and figures on the basis that they  
10 lack foundation. (See DWR Objections, pp. 5:6-6:13.) These documents, however, were all  
11 based on documents generated from DWR, the Delta Habitation Conservation and  
12 Conveyance Plan and other agency documents. All of the maps prepared by BSK Associates  
13 used Arcmap 10.4 software and relied on the ESRI World Imagery basemap. (See Declaration  
14 of Osha R. Meserve (“Meserve Dec.”), ¶ 6.) To the extent that DWR believes the maps and  
15 figures are inaccurate and require correction, they may offer those corrections. The  
16 documents do not, however, lack foundation, and should not be excluded on that basis.

17 **D. Exhibits That Detail Water Rights and Associated Maps are Both Relevant and**  
18 **Have Foundation**

19 DWR objects to LAND-4, LAND-5, LAND-6, LAND-7, LAND-50, LAND-51, LAND-52,  
20 and LAND-55 as lacking foundation and relevance. (DWR Objections, pp. 5:3-5, 11-12.)  
21 DWR is wrong. LAND-50, LAND-51, LAND-52 and LAND-55 are all descriptions of water  
22 rights contained in the LAND et al.’s protests, submitted January 5, 2016. These water rights  
23 are also included on a list of potentially injured water rights that DWR attached as Exhibit C to  
24 its September 11, 2015 Addendum to its August 25, 2015 petition, establishing their relevance  
25 in this proceeding. LAND-4 is a map of the districts participating in LAND, and was submitted  
26 during cross examination of Petitioners. LAND-5, LAND-6, and LAND-7 were also submitted  
27 as part of those protests as maps of the protestants’ water rights/diversions. These maps  
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1 were generated by BSK Associates using documents created by Petitioners. (See Meserve  
2 Dec., ¶ 6.)

3 **E. Messrs. Wilson, Elliot, Van Lobel Sels, Hester, and Lange are Lay Witnesses with**  
4 **Ample Foundation to Testify on Injury to Legal Users of Water by the Tunnels**

5 DWR and SLDMWA object to testimony offered by Messrs. Wilson, Elliot, Van Loben  
6 Sels, Hester, and Lange on the grounds that they have not established an adequate  
7 foundation to opine on the hydrologic conditions in the Delta, and asks that this testimony be  
8 excluded. They are mistaken; this testimony is a proper subject for these lay witnesses, and is  
9 wholly admissible in this action because it is based on their rational perceptions as longtime  
10 farmers in the Delta. The testimony of a lay witness should be both rationally based on the  
11 perception of the witness; and helpful to a clear understanding of his testimony. (Evid. Code, §  
12 801.) In particular, opinion testimony must be based on the proper foundation and “provide a  
13 reasonable basis for the particular opinion offered.” (*Lockheed Litigation Cases* (2004) 115  
14 Cal.App.4th 558, 564.)

15 Mr. Wilson lays the foundation for his testimony by describing the various water use and  
16 management roles he has played, as a member of the Delta Protection Commission, a farmer  
17 of orchards, and a trustee of multiple Reclamation districts. (Wilson Testimony, p. 1:5-13.) Mr.  
18 Elliot similarly establishes that he continues the 150 year Elliot family business of operating  
19 fruit orchards in the Delta. (Elliot Testimony, p. 1:2-7.) Mr. Van Lobel Sels likewise is a Delta  
20 farmer and executive of multiple Delta-based agricultural businesses, as well as the chair of  
21 the Delta Caucus of the Five-County Farm Bureau, and a trustee of Reclamation District 744.  
22 (Van Loben Sels Testimony, p. 1:2-9.)

23 Mr. Lange lays the foundation for his testimony by describing his decades of personal  
24 history operating Diablo Vineyards and Lange Twins Vineyards, a winegrape growing and wine  
25 production operation. (Lange Testimony, pp.1-2.) He also describes his experience with  
26 salinity intrusion and its effects on the quality and yield of the vineyards. (*Ibid.*) Finally, Mr.  
27 Hester lays the foundation for his testimony by describing his position as President of Islands,  
28 Inc., which owns over half of the agricultural land on Ryer Island. (Hester Testimony, p. 1:3-6.)

1 Each of these witnesses is entitled to rely upon his personal experiences in offering his  
2 opinion, and none are required to be an expert in hydrology or water quality to offer these  
3 observations. Accordingly, these materials should be admitted.

4 **F. Mr. Wilson’s Testimony Has Adequate Foundation and Is Reliable**

5 DWR’s claims that Mr. Wilson’s testimony is conclusory and unsupported and should be  
6 ignored. (DWR Objections, pp. 8:6-9:7.) Wilson’s testimony is supported by LAND-1, which  
7 was used by LAND et al.’s during cross-examination of Petitioners. This document shows  
8 water quality and water level impacts from installation of barriers on two north Delta sloughs,  
9 which has similar impacts as would the major new diversions being proposed. It is within Mr.  
10 Wilson’s experience to testify that DWR proposed barriers in 2014 and 2015. Further, the  
11 objection attacks exhibits LAND-57 and -69, but this pleading establishes that both documents  
12 are adequately supported, and so it was proper for Mr. Wilson to rely upon them in his  
13 testimony for foundation.

14 **G. Mr. Elliot’s Testimony Is Relevant and Adequately Supported**

15 DWR attacks Mr. Elliot’s testimony as without foundation and unreliable. This is  
16 partially premised on the supposed deficiency of supporting exhibits LAND-57, -58, and -69.  
17 As established in the attached Declaration of Osha R. Meserve and Table 1 herein, these  
18 exhibits are all properly admitted. Further, Mr. Elliot’s testimony is based upon his experience  
19 as a farmer in the Delta and should be taken in that spirit. His testimony established this  
20 experience, and he is therefore qualified to provide related lay testimony, including on topics  
21 such as water flow and injury to water rights.

22 SLDMWA also alleges that Mr. Elliot’s testimony is inadmissible because it includes a  
23 legal conclusion about water rights. (SLDMWA Objection, p. 45:21-15.) Mr. Elliot, however,  
24 may express his opinion about his water rights. “Testimony in the form of an opinion that is  
25 otherwise admissible is not objectionable because it embraces the ultimate issue to be decided  
26 by the trier of fact.” (Evid. Code, § 805.) Thus, this testimony is admissible.

1 **H. Mr. Van Loben Sels Testimony Is Relevant and Has Foundation**

2 DWR wishes to exclude Mr. Van Loben Sels testimony entirely because he is a new  
3 witness added to LAND et al.'s revised Notice of Intent. As explained in the Opening  
4 Statement of Osha R. Meserve (dated September 2, 2016), however, Mr. Van Loben Sels was  
5 substituted for other witnesses that were removed from LAND's witness list. LAND combined  
6 witnesses for several protests to streamline the presentation of testimony and save hearing  
7 time. Mr. Van Loben Sels' background and experience is similar to the witnesses that were  
8 named on the original LAND NOI and are no longer serving as witnesses.

9 **I. Mr. Tootle's Testimony Has Adequate Foundation and Is Not Speculative**

10 DWR's accusations about the deficiencies of Mr. Tootle's testimony are without merit.  
11 Mr. Tootle is trained and has experience as a geotechnical engineer (see LAND-36), and his  
12 statements about the tunnels' impacts on groundwater use were based on his technical  
13 expertise. In addition, his analysis was based on DWR documents and maps that were based  
14 on those documents, as well as references relied upon for engineering. One reason Mr. Tootle  
15 could not work from knowledge of the precise location of all groundwater wells in the vicinity of  
16 the tunnels and associated facilities is because DWR has not yet made that information  
17 available (see [http://www.water.ca.gov/waterdatalibrary/groundwater/new\\_wdl.cfm](http://www.water.ca.gov/waterdatalibrary/groundwater/new_wdl.cfm)), despite  
18 the Legislature's intent in adopting the Sustainable Groundwater Management Act to increase  
19 the data available about groundwater use. (Wat. Code, § 10720.1, subd. (f).)

20 Further, DWR's charge that Mr. Tootle was not permitted to testify on whether DWR has  
21 satisfied Water Code section 1701.2, subdivision (d) is incorrect. "Testimony in the form of an  
22 opinion that is otherwise admissible is not objectionable because it embraces the ultimate  
23 issue to be decided by the trier of fact." (Evid. Code, § 805.) Thus, this testimony is  
24 admissible.

25 **J. Mr. Ringelberg Is Qualified as an Expert for the Matters On Which He Testified,**  
26 **and His Testimony Has Adequate Support**

27 DWR attacks the qualifications of Mr. Ringelberg as a modeling expert (DWR  
28 Objections, pp. 16:20-17:13), but Mr. Ringelberg did not provide testimony as a modeling

1 expert. Instead, his testimony pertains to Delta flow and how operation of the tunnels would  
2 impact legal water users. Mr. Ringelberg's experience as an environmental scientist, and the  
3 eight years that he has spent performing analyses of the tunnels project qualify him to testify  
4 on those matters.

5 To the extent that DWR claims that Mr. Ringelberg's testimony lacks foundation, this is  
6 in part because of obfuscation by DWR itself. DWR refused to model outputs for specific  
7 locations beyond those discussed in its case in chief when LAND requested the information.<sup>2</sup>  
8 (See LAND-72.) DWR cannot disqualify testimony because it is not based on information that  
9 DWR itself refuses to provide.

10 **K. The Testimony of Ms. Leinfelder-Miles Is Relevant and Will Not Unduly Consume**  
11 **Hearing Time**

12 DWR's claim that the testimony of Ms. Leinfelder-Miles is irrelevant is incorrect. Ms.  
13 Leinfelder-Miles' testimony explains how salt accumulates in soil, and how the soil may  
14 respond if the salt content of irrigation water were to increase. This is relevant to injuries that  
15 the tunnels may cause to crop quality or output. DWR has premised this objection on their  
16 objection to the testimony of Mr. Ringelberg; as his testimony has adequate foundation (see  
17 II.J. above), this testimony should not be excluded based on DWR's objection to his testimony.  
18 DWR's objection that this testimony will necessitate an undue consumption of hearing time  
19 (DRW Objection, p.20:23-25) are thus equally unfounded. Ms. Leinfelder-Miles' testimony  
20 relates to an issue which is relevant to this proceeding and is admissible.

21 **L. Mr. Grant Is Qualified as an Expert and His Testimony Has Adequate Foundation**  
22 **and Relevance**

23 Mr. Grant's testimony is relevant to the proceeding because it establishes how  
24 increased salinity levels would affect crops grown in the Delta. DWR has attempted to argue  
25 that the tunnels will not cause injury to legal users of water from increased salinity. Among  
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28 <sup>2</sup> The admissibility of Petitioners' modeling has not yet been determined. (See, e.g.,  
October 6, 2016, Local Agencies of the North Delta, et al.'s Motion in Opposition to Petitioners'  
Modeling Evidence.)

1 other evidence, the 2015 BDCP RDEIR/S indicates that the tunnels would increase salinity of  
 2 water at some locations in the Delta. (See, e.g., DWR 66, pp.4-6.) Mr. Grant’s testimony  
 3 explains how increased levels of salinity impairs crop productivity, among other problems.  
 4 Thus, Mr. Grant’s testimony relates to reasonably foreseeable impacts of the project.

5 Further, Mr. Grant possesses the expertise necessary to support his testimony  
 6 because, as his revised resume indicates (Exhibit II-1), he has education and technical  
 7 experience studying and working in geological and climatological research and development at  
 8 Lockheed Martin, as well as cartography. Mr. Grant therefore has some background in  
 9 matters pertaining to hydrology. His testimony is not intended to be used as expert testimony  
 10 specifically on hydrologic modeling, so it is unnecessary to qualify him for that purpose.

11 **M. Mr. Hester’s Testimony Is Relevant and Has Adequate Foundation.**

12 DWR’s claim that Mr. Hester’s testimony lacks foundation and relevance is without  
 13 merit. Mr. Hester provided testimony based on his knowledge as the president of an  
 14 organization that owns over 6,000 acres in the Delta, and diverts over 9,000 acre-feet per year  
 15 for agricultural uses. (Hester Testimony, p. 1:3-27.) He expresses the concerns about the  
 16 tunnel’s impacts on established agricultural uses based on his knowledge of agricultural  
 17 operations in the Delta. DWR has failed to establish how this is irrelevant to an investigation of  
 18 how the proposed diversions will affect legal users of water, which is the purpose of Part-1A  
 19 hearings.

20 **III. SEPARATE RESPONSES**

21 LAND et al. offers the following responses to the specific portions of testimony to which  
 22 DWR and SLDMWA objected:

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.’s Response to Objections
LAND-1	Excerpt from the February 12, 2015, PowerPoint presented by the Department of Water Resources re: Draft Contingency Planning - Drought Preparedness and Response	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Used in cross exam of DWR Operations panel; obtained during DWR drought barriers process, 2014, 2015.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
LAND-2	Excerpt of the Conceptual Engineering Report. Volume 2 – Maps. Page 34	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Obtained via PRA from DWR. Vol. 1 of CER is Exhibit DWR-212.
LAND-3	Map - Intakes Overview Figure	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 5.  See II.C. above.
LAND-4	Map - Local Agencies of the North Delta Coalition Member Districts	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 5. See II.D. above.
LAND-5	Map - Bogle Water Rights Injuries from CWF Tunnels	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 5.  See II.D. above.
LAND-6	Map - LangeTwins Water Rights Injuries from CWF Tunnels	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 5.  See II.D. above
LAND-7	Map - Elliot/Stillwater Orchards Injuries from CWF Tunnels	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 5.  See II.D. above.
LAND-8	Excerpts from the July 30, 2014 Power Point Presentation from Tara Smith. Titled: Top Seven Insights from the 2014 Delta Drought Modeling. Municipal Water Quality Investigations Annual Meeting	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 8.  Obtained in during online research during DWR drought barriers process in 2014; used in cross exam of DWR/BOR modeling panel regarding inability of models to function in drought conditions.
LAND-20	Written Testimony of Daniel Wilson	<b>DWR objection:</b> <ul style="list-style-type: none"> <li>• Lacks Expert Qualification: LAND-20, pp. 1:21-26 and 2:3-16</li> <li>• Lacks Foundation: LAND-20, pp. 1:19-3:2</li> </ul>	See II.E., F. above.

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Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
		<p><b>SLDMWA objection:</b> pp. 2:3-11, 2:13-14, 2:14-16, 2:17-19 Lacks foundation and lacks expertise regarding water quality impacts (LAND-20, at p. 2:3-11), modeling (LAND-20, at p. 2:13-14; p. 2:14-16; p. 2:17-19), and the bases for Mr. Wilson's opinion regarding the actions of "export water interests."</p>	See II.E., F. above.
LAND-25	Written Testimony of Richard Elliot	<p><b>DWR objection:</b></p> <ul style="list-style-type: none"> <li>• Relevance: LAND-25, pp. 1:8-2:7, 2:16-20, 2:23-26</li> <li>• Lacks Foundation: LAND-25, pp. 1:20-23, 2:21-3:9, 3:17-21</li> <li>• Lacks Expert Qualifications: LAND-25, pp. 3:1-3, 3:12-14</li> <li>• Conclusory Legal Opinion: LAND-25, p. 3:16-17</li> </ul>	See II.E., G. above.
		<p><b>SLDMWA objection:</b> pp. 3:6-9, 3:16 Lacks foundation, is an inadmissible lay witness opinion, and is hearsay. LAND-25, at pp. 3:6-9, 3:16.</p>	See II.E., G. above.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
LAND-30	Written Testimony of Russell Van Loben Sels	<b>DWR objection:</b> <ul style="list-style-type: none"> <li>• Unpermitted revision to NOI: LAND-30 to add new topic of testimony</li> <li>• Relevance: LAND-30, p. 1:16-24</li> <li>• Lacks Foundation: LAND-30, pp. 1:25-3:24</li> <li>• Lacks Expert Qualifications: LAND-30, pp. 1:26-2:4, 2:13-19, 3:20-24</li> </ul>	See II.E., H. above.
		<b>SLDMWA objection:</b> p. 3:20-24	See II.E., H. above.
LAND-35	Written Testimony of Josef Tootle	<b>DWR objection:</b> <ul style="list-style-type: none"> <li>• Lacks Foundation: LAND-35, pp. 1:14-10:10</li> <li>• Conclusory Legal Opinion: LAND-35, pp. 8:23-9:4</li> </ul>	See II.I. above.
		<b>SLDMWA objection:</b> pp. 3:24-25, 5:20-22, 6:8-10, 10:3-6 [Lacks foundation and is an inadmissible lay witness opinion. LAND-30, at p. 3:20-24.]	See II.I. above.
LAND-37	PowerPoint Presentation of Josef Tootle	<b>DWR objection:</b> See Objections to Written Testimony of Josef Tootle	See II.I. above.
LAND-50	Russell Van Loben Sels Water Rights associated with S021406	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.D. above.
LAND-51	Warren Bogle water rights as described in the protest filed on January 5, 2016	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.D. above.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
LAND-52	Daniel Wilson water rights as described in the protest filed on January 5, 2016	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.D. above.
LAND-55	LAND member agency property owners' water rights as described in the protest filed on January 5, 2016	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.D. above.
LAND-57	Map - Private Properties Needed for Water Tunnel, Intake No. 2, 3, and 5	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 9. See II. C. above.
LAND-58	Map - Sacramento County Wells in Vicinity of Tunnels	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶¶ 5, 6. See II.C. above.
LAND-59	Map - San Joaquin County Wells in Vicinity of Tunnels	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 10. See II.C. above.
LAND-60	Map - Intakes 2 and 3 Tunnels/WaterFix Injuries – Water Delivery System Example	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 11. See II.C. above.
LAND-61	Map - Intakes 5 Tunnels/WaterFix Injuries – Water Delivery System Example	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 12. See II.C. above.
LAND-66	2002, CCF DWR Correspondences	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 3.
LAND-67	March 19, 2004, Letter from the State Water Resources Control Board addressed to the Bureau of Reclamation, Central Valley Operations Office, the Department of Water Resources, SWP Operations Control Office, and to Contra Costa Water District re: Water Quality Response Plan Pursuant to Decision 1641	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 3.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
LAND-68	July 28, 2004, Letter from the State Water Resources Control Board addressed to the Bureau of Reclamation, Central Valley Operations Office and the Department of Water Resources, SWP Operations Control Office re: Water Quality Response Plan Pursuant to Decision 1641	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 3.
LAND-69	2014, Draft DCE CM1 Property Acquisition Management Plan	<b>DWR objection:</b> Lacks Foundation	See Meserve Dec., ¶ 13.
LAND-70	July 25, 2014, Letter from the Friends of Stone Lakes National Wildlife Refuge Association addressed to National Marine Fisheries Service re: Draft Bay Delta Conservation Plan and Associated Draft Environmental Impact Report/Environmental Impact Statement (BDCP EIR/EIS)	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See Meserve Dec., ¶ 3.  Submitted to be part of record since comments on 2013 BDCP DEIR/S not included.
LAND-73	Delta Plan Litigation May 18, 2016 Ruling and June 24, 2016 Minute Order	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.B. above.
II-2	Grant Testimony	<b>DWR objection:</b> <ul style="list-style-type: none"> <li>• Lacks Expert Qualification: II-2, pp. 1:23-25, 2:3-4</li> <li>• Lacks Foundation: II-2, pp. 1:18-2:4</li> <li>• Relevance: II-2</li> <li>• Undue Consumption of Time: II-2</li> </ul>	See Exhibit II-1 and discussion at II.L. above.
II-3	Grant PowerPoint	<b>DWR objection:</b> See Objections to Written Testimony of Grant	See II.L. above.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
II-4	2014-7-28 SWRCB Ltr re; Water Quality Response Plan	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Document was used in cross-examination of Petitioners.
II-5	Ayers Irrigation Water Quality; Soil and Plant Tissue Testing in California	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in Grant testimony, p. 5:13.
II-6	Historical Freshwater & Salinity Conditions Report Highlights	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.B. above.
II-7	de Loryn et all NaCl Sensory Thresholds	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in References for Grant testimony, Proof of Service 1:4.
II-8	Grattan Irrigation Water Salinity and Crop Production	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in Grant testimony, p. 2:8.
II-11	Historical Fresh Water and Salinity Conditions	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.B. above.
II-13	Leinfelder-Miles Testimony	<b>DWR objection:</b> <ul style="list-style-type: none"> <li>• Relevance - II-13</li> <li>• Undue Consumption of Hearing Time: II-13</li> </ul>	See II. K. above.
II-14	Leinfelder-Miles PowerPoint	<b>DWR objection:</b> See Objections to Written Testimony of Leinfelder-Miles	See II. K. above.
II-17	MLM EC Diagram	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Leinfelder-Miles Testimony describes the process used to create this table in Leinfelder-Miles Testimony, pp. 5:1-7:20.
II-18	MLM Ryer Sampling Sites	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Leinfelder-Miles Testimony describes the relevance of this figure in Leinfelder-Miles Testimony, pp. 5:1-7:20.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
II-20	Rhoades 1974 Intro Pages	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited as a reference to Leinfelder-Miles Testimony, Proof of Service 1:25-16.
II-25 II-31	Ringleberg PowerPoint Bulletin_27 1931	<ul style="list-style-type: none"> <li>• <b>DWR objection:</b> See Objections to Written Testimony of Ringelberg</li> </ul>	See II. J. above.
II-33	Bulletin_76-Appendix-Salinity 1962 Mod	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in Ringelberg Testimony, p. 2:21-22.
II-34	Bulletin_125 1967	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.B. above.
II-35	Rio Vista Salinity	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.B. above.
II-36	RWQCB 2007	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	See II.B. above.
II-37	Islands, Inc. Water Rights	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in Hester testimony, p. 1:22-23.
II-38	Islands, Inc. Parcel Map	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in Hester testimony, p. 1:26-27.
II-39	2016 Crop Map	<b>DWR objection:</b> Lacks Foundation and Relevance due to lack of testimony	Cited in Hester testimony, p. 2:15.

Exhibit ID No.	Exhibit Description	Objections from DWR and/or SLDMWA	LAND et al.'s Response to Objections
II-40	Tom Hester Testimony	<b>DWR objection:</b> <ul style="list-style-type: none"> <li>• Relevance: II-40, pp. 3:1-7:2</li> <li>• Lacks Foundation: II-40, pp. 4:31-5:4</li> </ul> Lacks Expert Qualification: II-40, pp. 4:31-5:4	See II.F, M above.
II-43	Bradford Lange Testimony	<ul style="list-style-type: none"> <li>• <b>DWR objection:</b> Lacks Foundation: II-43, pp. 2:5-7, 2:13-14, 2:26-28</li> </ul>	See II. F. above.
		<b>SLDMWA objection:</b> pp. 2:28-3:1, 3:26-28 [testimony lacks foundation and the witness lacks expertise to support the testimony]	See II. F. above.

**IV. CONCLUSION**

As DWR itself noted, “the hearing need not be conducted according to technical rules relating to evidence and witnesses, except as provided in Government Code section 11513. The relaxation of strict rules of admissibility in administrative proceedings recognizes that the Hearing Officer has expertise in the subject matter and makes both the legal and factual determinations.”<sup>3</sup>

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<sup>3</sup> DWR Master Response to Objections, July 20, 2016, p. 6:15-19, which is available at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfi/x/docs/20160720\\_cadwr\\_response.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfi/x/docs/20160720_cadwr_response.pdf).

1 For the reasons described herein, DWR and SLDMWA's objections to the testimony  
2 and exhibits presented by LAND et al. should be overruled in their entirety.

3  
4 Dated: November 2, 2016

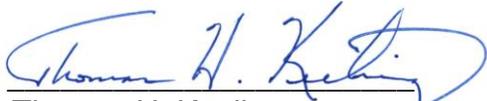
SOLURI MESERVE,  
A LAW CORPORATION

5  
6 By: 

7 Osha R. Meserve  
8 Attorneys for Protestants  
9 Local Agencies of the North Delta  
10 Bogle Vineyards/DWLC  
Diablo Vineyards and Brad Lange/DWLC  
Stillwater Orchards/DWLC

11 Dated: November 2, 2016

FREEMAN FIRM,

12  
13 By: 

14 Thomas H. Keeling  
15 Attorneys for Protestants County of San Joaquin,  
16 San Joaquin County Flood Control and Water  
Conservation District, and  
Mokelumne River Water and Power Authority

17 Dated: November 2, 2016

HANSON BRIDGETT LLP

18  
19 By: 

20 Michael J. Van Zandt  
21 Attorneys for Protestants Islands, Inc.

1 **STATEMENT OF SERVICE**

2 **CALIFORNIA WATERFIX PETITION HEARING**  
3 **Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

4 I hereby certify that I have on this 2nd day of November 2016, submitted to the State  
5 Water Resources Control Board and caused a true and correct copy of the following  
6 document(s):

7 **LOCAL AGENCIES OF THE NORTH DELTA ET AL., ISLANDS, INC., AND THE SAN  
8 JOAQUIN COUNTY PROTESTANTS' RESPONSES TO:**

9 **(1) DWR'S OBJECTIONS TO TESTIMONY AND EXHIBITS SUBMITTED BY LAND,  
10 ET AL. (GROUP 19) AND DANIEL WILSON (GROUP 20) AND MOTION TO STRIKE;  
11 and**

12 **(2) SLDMWA'S OBJECTIONS TO PART  
13 1B PARTIES' CASES IN CHIEF**

14 to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**  
15 **Service List** for the California WaterFix Petition Hearing, dated October 6, 2016, posted by the  
16 State Water Resources Control Board at  
17 [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfi  
18 x/service\\_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)

19 I certify that the foregoing is true and correct and that this document was executed on  
20 November 2, 2016.

21 Signature:   
22 Name: Mae Ryan Empleo  
23 Title: Legal Assistant for Osha R. Meserve  
24 Soluri Meserve, A Law Corporation

25 Party/Affiliation:  
26 Local Agencies of the North Delta  
27 Bogle Vineyards/DWLC  
28 Diablo Vineyards and Brad Lange/DWLC  
Stillwater Orchards/DWLC

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